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Thursday, December 20, 1928

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Judicial Power and Declaratory Relief*

By THE HONORABLE LEON R. YANKWICH, *Judge of the Superior Court, County of Los Angeles.*

Author of CALIFORNIA PLEADING AND PROCEDURE.

I. JUDICIAL POWER

Law should (and does) keep step with social development. Not precipitately, but gradually, law adapts itself to new conditions as they arise.

Nowhere is this more apparent than in the broadening, in the last decades, of the scope of judicial power.

The classic conception of judicial power may be stated as follows:

Judicial power can be applied only to actual controversies.

It can be invoked only where there exist claims of litigants brought before the courts for determination by such regular proceedings as are established by law or custom for the protection or enforcement of rights, or the prevention or redress of wrongs.[1]

No court sits to determine questions of law *in thesi*. There must be a litigation upon actual transactions between real parties, growing out of a controversy affecting legal or equitable rights as to person or property.[2]

This is equivalent to saying that, as a general proposition, the judicial function is the determination of controversies between parties, and that the courts will not concern themselves with settling abstract questions of law which may never be involved in an actual dispute regarding property or other rights.[3]

But while originally the exercise of judicial power implied the existence of an actual, present controversy, the refinements of civilized life, and the necessity for the orderly regulation, determination, and protection of human affairs and rights of property, have long required the extension of the judicial power beyond the settlement of controversies which have actually arisen, so as to include the function of providing security against disputes and claims which may arise.

In this manner, judicial power is used to forestall and prevent controversies which, but for the judicial declaration, might arise in the course of future transactions or proceedings.[4]

This is but an application (and perhaps extension) of the equitable principles which lay at the foundation of the bills *quia timet*. These bills were, ordinarily, applied to prevent wrongs or anticipated mischiefs, and not merely to redress them when done. By them, a party sought the aid of a court of equity, because he feared some future probable injury to his rights or interests, and not because an injury had already occurred, which required any compensation or other relief.

1. Muskrat v. United States, 219 U.S. 346. More recently, the Supreme Court of the United States, in several dicta has expressed doubt whether an action for declaratory relief is a "case" or "controversy," within the meaning of Article 3, Section 2 of the Federal Constitution: See Liberty Warehouse Co. v. Grannis, 273 U.S. 70; Willing v. Chicago Auditorium Association, 48 Sup. Ct. 507. See also, Comment, 38 *Yale Law Journal*, 104; Borchard, "The Supreme Court and the Declaratory Judgment," *American Bar Association Journal*, Vol. XIV, No. 11, p. 634 (December, 1928).
2. New Jersey v. Sargent, Adv. Op., 70 Law Ed. 177.
3. Title etc. Restoration Co. v. Kerrigan, 150 Cal. 289, 319.
4. Robinson v. Kerrigan, 151 Cal. 40, 47.

*EDITOR'S NOTE: *Certain dicta of the Supreme Court of the United States intimating that a Federal declaratory judgment act might not be constiutional have revived, in legal reviews, the discussion on the declaratory judgment. The following article by Judge Leon R. Yankwich, supplements the article on the subject by W. Turney Fox, Esq., published in Volume 2, Number 2 of the* BULLETIN, *and gives the historic and philosophical background around which the discussion of the declaratory judgment must turn.*

While this article was prepared some time ago, additions have been made to it, in the light of recent decisions.

The most recent extension of judicial power in this direction is the so-called declaratory relief or judgment, adopted in 1921.[5]

The object of these sections is to enable a person, in cases of actual controversy, to resort to judicial power for a declaration of rights, under a deed, will, contract or other written instrument, or a declaration of his rights or duties with respect to another, or with respect to property or rights thereto.

The remedy provided by these sections is cumulative, and does not restrict any remedy, provisional or other, provided by law for the benefit of any party to such action. The statute distinctly declares that no judgment rendered under it shall preclude any party from obtaining additional relief based upon the same facts.

By its very nature the statute is preventive. It tends to prevent future serious litigation by providing for a binding adjudication of rights and duties. Through it, the law, as some one has said, ceases to be a mere "repair shop" and becomes a "service station." A person need not wait until his rights have actually been invaded, nor need he risk the invasion of rights of others, before calling for the intervention of judicial power.

Common experience shows how easily an actual controversy may arise and exist, without an actual invasion of right or commission of wrong. And the uses which have been made of declaratory relief have emphasized the fact.

The Supreme Court of Kansas, in dealing with an action for declaratory relief which called for the determination of the question whether a person who is employed as a boiler maker by a railway corporation under a city franchise, is disqualified to hold the office of city commissioner under a city ordinance declaring that no employee of a railway corporation operating under a franchise granted by a city or having a contract with it, shall hold any office, said:[6]

> "There is a present controversy between the parties, the defendant claiming the right to perform the duties of the office to which he has been elected, and the plaintiff denying that right. The controversy is actual, not moot; concrete, not abstract. An interpretation of the statute concerning ineligibility is not the ultimate object of the suit, but is a necessary step in determining whether the defendant is entitled to act as city commissioner. That question under the ordinary procedure could only be judicially decided after the defendant had assumed the duties of the office, thereby exposing himself to punishment by both fine and imprisonment. Even if injunction would lie to prevent his acceptance of the office, such relief would be unnecessary. In the remote contingency of his desiring to occupy the office after his ineligibility had been determined, the statutory penalty would exercise a sufficient restraining influence. The decision when announced is not merely advisory. It is a final adjudication having the binding force of any other judgment. If after its being adjudged that the defendant is disqualified he should undertake to hold the office, and the state should bring a proceeding to oust him, the only matter open to inquiry would be whether he was actually holding it; he could not be heard to raise any issue of either law or fact going to the question of his ineligibility, and this results from the principle of res judicata, and not from that of stare decisis."

The statute which the court had under consideration, while modeled after the English rule, is substantially the same as ours. It reads, in part, as follows:

> "In cases of actual controversy, courts of record within the scope of their respective jurisdictions shall have power to make binding adjudications of right, whether or not consequential relief is, or at the time could be, claimed, and no action or proceeding shall be open to objection on the ground that a judgment or order merely declaratory of right is prayed for. Controversies involving the interpretation of deeds, wills, other instruments of writing, statutes, municipal ordinances, and other governmental regulations, may be so determined, and this enumeration does not exclude other instances of actual antagonistic assertion and denial of right." Laws 1921, c. 168, sec. 1.
>
> "This act is declared to be remedial; its purpose is to afford relief from the

5. Code of Civil Procedure, secs. 1060-1062.

6. State, ex rel. v. Grove, 109 Kan. 619, 201 Pac. 81.

uncertainty and insecurity attendant upon controversies over legal rights, without requiring one of the parties interested so to invade the rights asserted by the other as to entitle him to maintain an ordinary action therefor; and it is to be liberally interpreted and administered, with a view to making the courts more serviceable to the people." Laws 1921, c. 168, sec. 6.

II. Some Recent Uses of the Declaratory Judgment

Until recently, the only precedents we had for declaratory relief came from England.

There it is administered under what is known as the rule of 1883 of the Supreme Court.

Because action by the court whose aid is invoked is purely discretionary, English courts have held that it "should be exercised with great care and after due regard to all the circumstances of the case."[7]

Under our statute, the granting of relief is, likewise, discretionary. The court may refuse relief "in any case where its declaration or determination is not necessary or proper at the time under all circumstances."

Few cases arising under this statute since its enactment have gone to the appellate courts. It will not therefore be possible to know for some time, all the uses to which the act is being put.

In the first reported case[8] it was resorted to by an attorney for a determination of his rights under a contract of employment on a contingent fee basis.

The question arose upon a demurrer to the complaint. The Supreme Court, while upholding the constitutionality of the statute, had no occasion to determine what relief could or could not be granted under it.

More recently it was used to determine a person's right to certain motion picture films and productions.[9]

And where the record showed that a controversy not only existed but was being continuously waged as to the rights of certain parties under a lease; it was held to be the *duty* of the trial court specifically to determine such rights. "It was just such a case," said the court, "that the provisions of our law regarding declaratory relief were designed to meet and accommodate."[10]

The Kansas statute, which was adopted in the same year as ours (1921), seems to have been used quite frequently and several cases have gone to its Supreme Court.

These cases show the possibilities of declaratory relief and the variety of uses to which it has been put.

In the case already referred to, the case in which the Kansas court considered the constitutionality of the statute, the proceeding to determine the right of the city commissioner to hold office was instituted before he attempted to enter upon the discharge of the duties of his office.

In another case, the statute was used to determine the right of a city to issue internal improvement bonds, bearing a rate of interest greater than five per cent, without reserving the privilege of prepayment at the end of five years.[11]

The court took occasion to point out the advantages of the statute, saying:

> "The proceedings in this case serve to illustrate operation of the declaratory judgment act. Execution of the city's internal improvement program placed it in this dilemma. If privilege of prepayment were not written in the bonds, the city and its officers were exposed to prosecution by the state for abuse of corporate power and violation of law, and the securities might not be marketable. If privilege of prepayment were written in the bonds, a heavy financial burden would be placed on the taxpayers, perhaps unnecessarily. Formerly, the city would have been compelled to choose one course or the other, and abide the consequences. The law officers of the state could not give a binding interpretation of the statute, and, because of its ambiguity, could not consent to the course which the city claimed it was authorized to pursue. Therefore a controversy existed, justifiable under the declaratory judgment act. The action was commenced in the district court on February 7, 1922, and the defendant answered instanter. The cause was heard on the

7. Warrington, J. in Burghess v. Attorney General, (1911) 2 Ch. 139; See Akerman v. Union & N. H. Trust Co., 91 Conn. 500, 100 Atl. 22.
8. Blakeslee v. Wilson, 190 Cal. 479.
9. James v. Hall, 55 Cal. App. Dec. 355.
10. Lane Mortgage Co. v. Crenshaw et al., 56 Cal. App. Dec. 1163.
11. State, ex rel. v. Kansas City, 110 Kan. 603., 204 Pac. 690.

petition and answer, and a stipulation that the pleadings stated the facts. The declaration of the district court was rendered on February 7, and the appeal was lodged in this court on February 10. This court was in session when the appeal was filed. Because of the public importance of the question involved, the cause was advanced for immediate hearing, and on February 10 it was submitted for final decision, on oral argument and briefs of counsel which accompanied the appeal papers. The city may now proceed with its improvements without any of the embarrassments and without any of the delay which would have been encountered if the remedy of declaration of right had not been available."

Again, it was used to determine the powers of the members of the State Board of Education in controversy with the State Superintendent of Schools.[12]

This latter case was an original proceeding in mandamus and quo warranto brought in the Supreme Court. The court ruled that it had power to make declarations under the declaratory judgment statute in matters in which it had original jurisdiction.

I doubt if such power could be exercised by our District Courts of Appeal and Supreme Court in original proceedings, because our statute limits the relief to actions in the Superior Courts.

The Kansas Supreme Court, in a subsequent case, exercising the discretionary power it has in quo warranto proceedings, refused in such a proceeding to make a binding declaration respecting the validity of an issue of municipal bonds.[13]

These cases indicate that the Kansas statute has been used in many instances to determine the powers of public officials and public bodies.

No doubt, most of them were friendly suits, instigated by officials in a quandry.

But while stressing the usefulness of the statute, the Kansas Supreme Court has refused to sustain proceedings brought under it, in cases presenting no actual controversy.

And so it ruled in a quite recent case that one who has made no application for a building permit upon lots which he owns is not entitled to a declaratory judgment on the reasonableness of a city zoning ordinance.[14]

The court said:

"The plaintiff is the owner of several lots and blocks of lots located in different parts of the city, some in one district and some in another, as defined by the zoning ordinance. He had made no application for building permit to erect any kind of a structure upon any of his lots. His complaint is that many of the provisions of the ordinance might interfere with uses which he might desire to make of his property, or prevent a sale of the property to some one who desired to make a specific use of it. In so far as the authority of the city to pass a zoning ordinance making restrictions upon the use of property in certain designated districts, that question is not open to controversy. It was settled by the decision of this court in Ware v. City of Wichita, supra. The declaratory judgment law is available only 'in cases of actual controversy.' R. S. 60-3127. The zoning ordinance may be unreasonable when applied to a specific use which an owner desires to make of specific property, but until such a situation is presented there is no actual controversy between the owner of property and the city concerning the zoning ordinance. The citizen is not entitled to litigate under this statute questions which may never affect him to his disadvantage. To speculate upon possible uses that the owner or his vendee might desire to make of the property, and seek a judgment determining them, is simply to ask the opinion of the court with reference to a situation that may never arise."

In other words, the court refused to allow the declaratory judgment to be used to merely allay a litigant's fears as to what might never arise.

In this, they have followed the English courts.[15]

It seems to me that the declaratory relief statutes, the uses to which they have

(Continued on Page 126)

12. State, ex rel. v. Wooster, 111 Kan. 830, 208 Pac. 656.
13. State, ex rel. v. Wyandotte County, 117 Kan. 151, 230 Pac. 531.
14. West v. City of Wichita, 118 Kan. 265, 234 Pac. 978.
15. In Re Clay, (1919) 1 Ch. 66.

The President's Page

Fellow Members,

Los Angeles Bar Association:

THE MEETING OF DECEMBER 20, 1928

The above meeting will be in honor of the elders at our bar, many of whom were interested in bar association affairs before some of us were born. These men, some of whom are still active in legal or business affairs, will be guests of honor and on that occasion we shall have the opportunity of hearing an address by our fellow member, Arthur Ellis, on the history of the bench and bar, into which will be woven the early history of this community and something of the romance of those days when Los Angeles was emerging from a small settlement to become one of the great cities of the West. No word from me could add to the reputation of Arthur Ellis as an able speaker, well prepared by many years of research to entertain and instruct us concerning the most interesting period in the life of this locality. His address will not duplicate any heretofore delivered.

We can not afford to miss this opportunity and your program committee feels justified in expecting a large and enthusiastic meeting. With but one speech scheduled for the evening, we may anticipate adjournment well before ten o'clock.

In this connection I wish to call attention to the fact that the Committee is providing a departure in the way of musical entertainment that will be particularly pleasing and fitting to the occasion. I am not permitted to divulge the exact nature of this feature, but I will say that I have emphasized to the Committee the necessity of giving consideration to pulchritude in their selection of artists. I am quite certain the Committee has the ability and inclination to fulfill expectations.

At this meeting, also, there will be held the election of a nominating committee. Consistent with opportunity for free expression of the members, that task can be accomplished in a short period of time.

Also, I think it is safe to predict that the dinner itself will be equal to the last one, which was a great improvement over some of the previous efforts.

ASSOCIATION AFFAIRS

The business of our organization is in satisfactory condition and now, as the year is drawing to a close, the burden rests upon your Board of Trustees and upon the Master Committee, to study and pass upon the reports of various committees of the Association. Most of the committees have performed their duties with ability and have devoted much time and thought to the problems submitted to them; some few have not lived up to expectations, but still have an opportunity of finishing their labors. As far as possible, your officers and trustees have avoided submitting to any committee matters which would not justify earnest consideration and report and I request all members of committees to see to it at once that their particular group finishes its work.

THE PLEBISCITE AND THE JANUARY MEETING

It definitely has been decided to consider the plebiscite at the January meeting. There will be no other program and opportunity will be given every member to voice his views. Do not miss that one. The plebiscite questionnaire is already in your hands and in the November 15th issue of your BULLETIN you will find my lengthy review of some of the problems which may arise in the discussion. I call your attention to it, not because of any merit it may have, but so that you may have a better idea of some of the discussions, pro or con, which may take place at the meeting. Your secretary, Mr. Variel, has so arranged the form of questionnaire that a corps of assistants can count and analyze fifteen hundred of them in one night. So do not hesitate to send yours in.

POLICE AFFAIRS

The efforts of our Association to put a stop to illegal police methods brought unexpected newspaper publicity and public comment and interest. Our work on that question started quietly in May of this year and in the October BULLETIN I felt it necessary to outline to the membership the evils to be eliminated. It was expected that this work could be carried on quietly and efficiently and without public attention, unless later on it became necessary to enlist public interest to accomplish the desired end.

The many acts of brutality and cruelty on the part of some police officers which have been reported, and some types of admitted unlawful acts by such officers, make it difficult for one to maintain an unprejudiced attitude, but such is necessary in an organization charged with the grave responsibility of judging the acts of so important a public body as the police department.

So far as possible, in making called-for addresses on the subject, I have refrained from inflaming the public mind by any recitation of the incidents which I am satisfied have occurred in our own police department.

However, our real study, investigation and constructive effort have gone on quietly and as originally laid out, and we want the members to understand that this same work will continue in a firm manner, no matter how long it may take, until the necessary changes are effected. The work is now lodged in the hands of a committee composed of very able men at this bar, W. H. Anderson, chairman; Herbert J. Goudge, Joseph L. Lewinson, E. W. Camp, and John W. Hart. The personnel of that group is alone sufficient to insure capable consideration and ultimate results.

In connection with this subject, we have endeavored to analyze the police viewpoint or "police mind." Some have said it is wasted time and effort, but I for one do not agree with that view. I personally believe that, aside from just ordinary habits of brutality which certain officers have acquired, there exist certain underlying causes that contribute to the police officers assuming to take the law into their own hands. The actions of the shyster class of attorneys, who stoop to anything to clear guilty persons, and the failure of some courts to impose penalties which will control crime, tend to make the police feel that extra judicial efforts are justified and they assume the role of prosecutor, judge, jury and punisher. Of course, they are attacking the problem at the wrong end and in the wrong manner and they must be led or be made to see a new light. The crooked attorney gradually will be eliminated by the State Bar. Already that class is running for cover and in time the control will be effective.

In regard to punishment meted out to criminals, I have been studying the reports of sentences imposed in our lower courts upon those engaged in the sale of intoxicating liquor. That violation of the law is one that should be punished with severity, whereas the records show a leniency that amounts to licensing. Straight jail sentences imposed on that class of offenders are required.

Briefly, the records for a three and one-half months' period covering Wright Act cases of sale show 321 arrests, with 237 convictions, 47 cases pending, 17 dismissed or discharged, 2 acquitted, 2 bail forfeited, 2 complaints refused, 12 convicted on possession or transportation, 1 released to the navy and 1 transferred to the Juvenile Bureau.

Of the whole list of 237 convicted for sales, only 12 per cent received *straight* jail sentences—with no suspension of the jail sentence.

Amongst the above were defendants with previous police records, but the available data does not disclose the number or percentage with such previous record.

However, in a more recent period of two weeks, the study of arrests for the same crime shows 40 cases, of which 24 of the defendants had been previously arrested for various offenses from once to eight times. Of those 40 cases, 4 were dimissed, the rest convicted, and of those convicted, *only* 5 *were given straight jail sentences.*

Evidently some of the courts are not enforcing the law with sufficient strictness. Much of our crime comes from this bootlegging class, the individual members of which can in a few days collect enough to pay their fines for the few times they can be caught.

The point I wish to make is that laxity of courts and criminality of that very small percentage of attorneys which is the scum of the bar, give certain types of police officers a feeling of justification for making their police work effective by direct action.

Our Association has gradually emerged from the days when its efforts were confined to theoretical discussions and has stepped out into fields where it can be of direct and practical aid and assistance to the public in making the administration of justice, clean, responsive and effective. Only the surface has been scratched and our work should continue along the many lines of such activity open to us and requiring the application of our specialized knowledge and the power of our organized effort.

I have no sympathy for those who deplore our public efforts as undignified. We have suffered some knocks in the past and must undergo still more; but I firmly believe that the public will come to understand us as a body entitled to their utmost confidence, when they observe that over a course of years our sole object is to bring about fair, equal and prompt justice for all, to make our laws plain and effective, and to do our part in protecting the poor or ignorant from the wrongs of any group, however powerful it may be.

H. T. Morrow.

Report of Sub-Committee on Question of the Abolition of Capital Punishment

TO THE COMMITTEE ON CRIMINAL LAW AND PROCEDURE OF THE LOS ANGELES BAR ASSOCIATION:

Your sub-committee appointed to study the question of the abolition of capital punishment and to recommend such action, by way of legislation, as may be deemed proper, herewith submits the following report:

Capital punishment has been abolished in the following eight States in the United States: Maine, Rhode Island, Michigan, Kansas, Wisconsin, North and South Dakota and Minnesota; also in the following countries: Norway, Sweden, Denmark, Finland, Belgium, Austria, Holland, Portugal, Russian, Italy (except that it has recently been re-enacted to apply to attempts on the lives of the King and the Prime Minister) Roumania, Lativia, Lithuania, Esthonia, fifteen cantons of Switzerland, New South Wales, Brazil, Ecuador, Venezuela, Argentine, Costa Rica, Columbia, Honduras and three states in Mexico.

Mr. Thomas J. Martin, a member of the Los Angeles bar, informs us that in the year 1925 he addressed a letter to the warden of every prison in the United States inquiring whether he was for or against capital punishment and that the result of the canvass was that about 90 per cent of these officials were against capital punishment and about 10 per cent for it.

The opponents of capital punishment include all the greatest and noblest names from Confucius, Buddha and Jesus on the one hand, to William Ellery Channing, Abraham Lincoln, Victor Hugo and Leo Tolstoi on the other.

Those who favor capital punishment contend

1. That capital punishment is the only sufficient vindication of the sanctity of human life; that when the life of an individual is unjustly taken by another individual, the horror of the community for such an act cannot be adequately manifested except to exact the life of the killer in payment.
2. That capital punishment, kept upon the statute books, serves to prevent unlawful retribution by individuals; that when the State does not sanction capital punishment, too often the sense of the community expresses itself in lynchings.
3. That capital punishment acts as a deterrent.

Those who oppose the death penalty contend

1. That capital punishment is no deterrent to crime, as its immoral and brutalizing effect on the community creates an incentive to the weak-minded and emotional.
2. That because of the revolt against capital punishment the guilty escape and that there is a far higher percentage of convictions where the death penalty has been abolished.
3. That it is irrevocable and places beyond correction many miscarriages of justice.

Your committee does not believe that capital punishment decreases the number of murders; it does not believe that the abolition of capital punishment will cause a community to become lawless and express itself in lynchings and it does not believe that the State must retain the institution as its last defense against the criminal.

CAPITAL PUNISHMENT DOES NOT DETER

The United States census report shows that the States that have abolished capital punishment had a very low percentage of murders compared with other States in which the law provides for the death penalty. The percentage of homicides per 100,000 of population in Maine was 0.3; Wisconsin, 0.7; Michigan, 1.1; Rhode Island, 1.3, which compared with such States as Virginia with a percentage of 3.2; California, 4.7; Virginia, 5.2; West Virginia, 5.4; Montana, 6.7; Nevada, 14.2, furnish a reasonably fair illustration of the weakness of capital punishment as a deterrent.

There was an increase in the number of homicides in most of the States between the years of 1910 and 1920, due, no doubt, to the inflamed state of the public mind which was caught in the whirl of the World

War. Los Angeles showed a record of 9.8 per 100,000 population for the decade, there being no change; Atlanta, Ga., had 23.4 homicides in 1910 and 40.9 in 1920; Milwaukee, where capital punishment is not practiced, dropped from 3.4 in 1910 to 3.0 in 1920. It is interesting to note in examining the statistics of the executions in the State of Ohio that the year in which was recorded the greatest number of executions, that of 1904, showed also the greatest number of first degree murders—forty-seven. The force of brutalizing influence and suggestion reveals the cause.

During the 25 years from 1881 to 1905 Ohio averaged one conviction for homicide to 75,223 of population and during the same period Michigan averaged one to 116,892 of population and Wisconsin one to 118,400 of population; Ohio executed 86 persons in that period, while Michigan and Wisconsin executed none. These figures give mute evidence of the futility of legal executions. As a fundamental proposition, we assert that capital punishment is not a deterrent for the reason that the mind that will stoop to crime is for the most part incapable of the calm judgment that weighs the consequences and probabilities. It is passion, not thought, that slays; and passion can not think; the horrors of execution never come to the mind until it is too late.

LYNCHINGS

It is contended by those in favor of capital punishment that the death penalty kept upon the statute books serves to prevent unlawful retribution by individuals. Statistics, however, show that lynchings occur with greater frequency where capital punishment is retained than in the States where it has been abolished.

Alabama, Arkansas, Georgia, Louisiana, Mississippi and Texas each had over 200 lynchings in the period from 1890 to 1917. During that time there were five States without capital punishment, of which Rhode Island and Maine had no lynchings, Wisconsin 2, Michigan 4, and Kansas 20. From this it would appear that lynchings are fewer in number where the death penalty is abolished than where it is retained.

Samuel J. Barrows, secretary of the Prison Association, said, "In no State is the respect for human life held more sacred by the people than in those States where it is held most sacred by the law."

IRREVOCABLE ACTION

Lafayette declared: "I shall ask for the abolition of the Penalty of Death until I have the infallibility of human judgment demonstrated to me."

Samuel Untermyer, prominent New York lawyer, says: "To err is human, human justice is but human and often errs, far more frequently than we are willing to admit. To say that our system is as yet the best that we can or should devise is to fly in the face of all experience. We know that innocent men have been and are occasionally convicted and executed. For each such instance that happens to reach the light of day, how many have gone undisclosed we do not know, but those of us who have had experience in the courts can well conjecture and we stand aghast at what is happening in our midst, especially to the poor and friendless. The thought that the law has put these cases beyond the reach of correction is abhorrent to our sense of justice and humanity."

The certainty of a punishment in society is in the great majority of cases in the inverse proportion to its severity. The more terrible it is, the less likely is the State to impose it with any regularity or vigor.

The people have been humbugged into believing that murder is caused by one with a depraved heart and that the death penalty secures the life and property of the innocent. In England, about 100 years ago, there were over 200 offenses that were punishable with death. The death sentence was passed upon children under 10 years of age. Every time it was proposed to lessen the number of crimes punishable by death it was argued that it would be the destruction of the State, yet nobody today would care to adhere to the old laws.

The fact is that every person starts life with a certain physical structure, more or less sensitive, stronger or weaker. He is played upon by everything that reaches him from the outside. How a man will act depends upon the character of his human machine and the strength of the various stimuli that affect it. Every one knows that this is so in disease and insanity. Most investigators know that it applies to crime. But the great mass of people still sit in judgment, robed with self-righteousness, and determine the fate of their less fortunate fellows. When this question is studied like

any other, we shall then know how to get rid of most of the conduct that we call "criminal" just as we are now getting rid of much of the disease that once afflicted mankind.

To attempt to abolish crime by killing the criminal is the easy and foolish way out of a serious situation. Unless a remedy deals with the conditions which foster crime, criminals will breed faster than the hangman can spring the trap. Capital punishment ignores the causes of crime just as completely as the primitive witch doctor ignored the causes of disease, and, like the methods of the witch doctor, it is not only ineffective as a remedy, but is positively vicious in two ways. In the first place, the spectacle of State executions feeds the basest passions of the mob. And in the second place, so long as the State rests content to deal with crime in this barbaric and futile manner, society will be lulled by a false sense of security and effective methods of dealing with crime will be discouraged.

We, therefore, recommend that the death penalty in the State of California be abolished and a law be substituted therefor creating life imprisonment without hope of a parole.

Respectfully submitted,
SAUL S. KLEIN, Chairman
BERTIN A. WEYL
ORFA JEAN SHONTZ.

(The foregoing report was approved and adopted by the Committee on Criminal Law and Procedure at its November meeting.)

Special announcements by law firms of new locations and new associations are most effectively made to the profession through the pages of the BULLETIN. *In addition, such announcements serve as a manifestation of good-will toward and co-operation with the* BULLETIN *in its program of constructive endeavor for the welfare of the Bar Association.*

Fiftieth Anniversary Meeting

LOS ANGELES BAR ASSOCIATION

THURSDAY, DECEMBER 20, 1928

6:00 P. M.

Los Angeles Chamber of Commerce Dining Room

The first Bar Association organized in Los Angeles County, was formed fifty years ago, in December, 1878. A program befitting the occasion has been arranged and it is expected that many of those who were members of the bar in those early days will be on hand to join in celebrating this anniversary. Probably no meeting of this organization having greater historic significance and spirited interest, will ever be attended by any member.

The lawyers who were prominent in early Bar Association affairs will be guests of honor at this meeting.

The speaker of the evening will be

MR. ARTHUR M. ELLIS

At a previous meeting, Mr. Ellis, a fellow member, and President of the Historical Society, gave an illustrated talk on the transition from the old Californian to the American rule in Los Angeles as relates to the legal field. At the coming meeting he will touch upon that period and will dwell on the stirring times from 1878 to 1888, at which two dates the organization and reorganization of our Bar Association took place. The illustrations will bring back the bench and bar of that period and make realistic the old Los Angeles of the boom days.

The older members will be interested in refreshing their memories of those stirring times and the younger members in learning of the early history of our bar. DO NOT MISS THIS MEETING.

At the conclusion of the dinner there will be an election of a Nominating Committee, to nominate Officers and Trustees for the ensuing year.

Make a reservation for yourself and guests and do not overlook the half-hour period from 6:00 to 6:30 p.m., which is the one opportunity given the members during the month for social contact. If you cannot attend the dinner, come at 7:30 p.m. for the program.

Guests are Welcome

Informal

Dinner $1.50—Pay at the door

Entertainment by Spanish Orchestra and Artists

Mail Your Reservation Card Promptly

COMMITTEE MEMBERS:
John W. Hart
Kimpton Ellis
Kenyon F. Lee
Walter E. Burke

JOE CRIDER, JR.,
Chairman Program Committee.

OF IMPORTANCE TO MEMBERS

EMPLOYMENT APPLICATIONS

There are now some thirty or more employment applications of various kinds on file in the secretary's office. Members who are in need of office assistance are not only urged to call and make use of the information contained in the file, but to advise the secretary, *by letter,* of positions which are open. Such communications will be regarded as confidential and references will not be made thereon, except in cases where applicants are thought to be peculiarly fitted for particular positions, *and then only by calling the member's attention to the applicant.*

We *know* there is a supply and we are *certain* there is a demand. Your co-operation is needed to bring the two together. The file will be of no value unless you use it.

R. H. F. VARIEL, JR.,
Secretary.

The Attachment Laws of California*

By GEORGE E. MCCAUGHAN *of the Long Beach Bar*

Under the title, "Law of Attachment and Garnishment," page 431, volume 10, *Modern American Law,* Dr. Oliver A. Harker, at the time of writing, and perhaps still, Dean and Professor of Law, University of Illinois Law School, states that cause for attachment may be divided into three general classes:

a. Where the debtor has placed himself in such a position that he can not be reached by personal summons.

b. Where he has made or is about to make such disposition of his property that it can not be reached by ordinary execution.

c. Where the debt which is the subject matter of the litigation was fraudulently contracted by the debtor.

Dr. Harker proceeds with discussion under sub-titles, some of which are "Non-resident Debtors," "Absconding Debtors," "Fraudulent Disposition of Property," "Debtor Contemplating Fraudulent Disposition of His Property," "Intended Removal of Property from State," "Fraud in Contracting the Debt," "Fraudulent Concealment of Property," and "Fraudulent Conveyance of Property."

Referring particularly to paragraph one of section 537 of our Code of Civil Procedure, we find attachment may issue "In an action upon a contract, express or implied, for the direct payment of money, where the contract is made or is payable in this State, and is not secured by any mortgage or lien upon real or personal property, or any pledge of personal property, or, if originally so secured, such security has, without any act of the plaintiff, or the person to whom the security was given, become valueless."

This paragraph refers to contracts made or payable in this State. In the forty-nine jurisdictions noted in the excerpts by Martindale, omitting Canada, we find only twelve providing for attachment based simply upon the existence of a contract debt. In all the other States it is provided that there must be one or more of the special reasons indicated by Dr. Harker.

In my judgment our attachment law may be and often is an instrument of unjust oppression, and we know the writ is often invoked improperly. There may be a contract obligation to which there is a perfectly good defense, yet a plaintiff may sue out a writ of attachment, close up the business of the defendant, who may be perfectly solvent, and, by destroying credit and inciting action by other creditors, drive the defendant into bankruptcy.

Very much of the business of the country is done upon credit. A merchant, for instance, may have extensive obligations and yet be perfectly solvent and enjoy good credit rating; yet if some disgruntled creditor should attach, that action is immediately reported to the commercial agencies and broadcast to the subscribers of the various agencies.

To attach a stock of merchandise, for instance, even though the attachment be released upon bond within a reasonable time, is almost disastrous to the merchant. Custodians are in charge, sometimes the doors are locked and a notice of attachment posted in the windows and a perfectly respectable citizen is ruined.

I was at one time discussing a legal proposition with Mr. Robert J. Cary, now general counsel of the New York Central Railway Company. During the conversation he remarked that concrete, actual cases are much superior to hypothetical cases in illustrating or applying a particular theory or position. Without using the true names I desire now to call attention to two cases that have come within my observation.

*EDITOR'S NOTE: *The writer of this article, Mr. McCaughan, as chairman of a subcommittee, recently submitted to the Section on Civil Procedure of the State Bar a report on the subject of Attachment Laws. In view of the excellence of the report, Mr. McCaughan was requested by the editor of the* BULLETIN *to prepare for publication this article, covering certain phases of the report.*

The Jones Company, a corporation, was manufacturing certain confections and had made a contract with Smith to handle its products in New York. Large shipments were made to Smith, but controversy arose over the stock and the terms of the contract and certain of the goods were returned. Still there was a very definite dispute as to how much the Jones Company was indebted to Smith upon the ending of the contract out of which this controversy grew.

Much correspondence was had and the Jones Company offered $5,000.00 in settlement. Smith declined this settlement, brought suit in California to recover $41,-186.59, basing the action upon contract obligation, secured a writ of attachment and levied upon the plant, stock and other property of the Jones Company.

The factory was closed and a custodian placed in charge. The sheriff demanded a bond of $75,000.00 to release the property. It took more than a week to get an order from the court directing release upon the giving of a bond for $20,000.00. In this interval the company was unable to carry out its contracts, fill orders, secure stock, and as a result the business was destroyed.

Upon negotiation the plaintiff accepted $7,000.00 in settlement of his enormous and unjust demand.

The Jones Company was solvent at the time of the beginning of the action; many of its stockholders were men of ample means; and Smith was not in danger of losing one penny of a just demand. In addition to the solvency of the company, which was growing all the time, the plaintiff was protected by the liability of the stockholders.

It was not alleged or claimed in any way that the Jones Company was committing any fraud, concealing its property or conveying or attempting to convey to defraud its creditors. It was a small but growing solvent concern enjoying good credit in the community in which it was located and with the trade in general.

The other case did not result in so great a misfortune. A most substantial mercantile establishment, a large department store doing an extensive business, never in trouble, enjoying good credit with the trade and at the banks, and continuously growing and expanding in all directions, was called upon by an officer with a writ of attachment with instructions to levy on the property of the concern. The suit was for less than $700.00. About $300.00 had been remitted a short time before, but advice of this remittance perhaps had not reached the collection agency in whose hands the matter had been placed, until after the beginning of suit. The balance of the demand was based upon bills not yet due under the terms of trade and credit.

It seems that the claim was based upon purchases from a manufacturer or wholesaler who had failed in business and made an assignment for the benefit of creditors and that the assignee had sent this claim to a collection agency in Los Angeles. This collection agency immediately brought suit. It may be, as is often the case, that this agency was to receive a greater commission for debts collected after litigation was brought and hence commenced the action. It is well known that such agencies resort to attachment as a coercive measure.

The officer, knowing the merchant well, refused to make immediate levy although he had very definite instructions. The merchant was advised that the law of California permitted a plaintiff to levy an attachment and that although the debt was not quite due and there was no legitimate reason, except that there was a contract obligation, for suing out the writ, he could not afford to allow the attachment to be levied, hence he would better pay, deducting the remittance already made, paying also, as he would have to, the costs accrued.

An attachment defendant has no adequate protection by reason of the attachment bond. The obligors on such bonds are liable only for the proximate consequences naturally and ordinarily resulting from the effect of the writ and not for the remote consequences that might follow. This rule excludes damages for destruction of business, loss of reputation and credit and many other so-called remote consequences; and the fact that the attachment debtor may have an action for malicious prosecution other than the action upon the bond does not afford much relief. There is no adequate measure of damages when one is driven into bankruptcy and his credit and reputation as a business man and a citizen ruined.

See such authorities as 3 Cal. Jur., page 556, section 128; Elder v. Kutner, 97 Cal. 490; Aigeltinger v. Whelan, 133 Cal. 110.

The attachment remedy is legitimate and useful in proper cases, but it should be an instrument of protection and not of oppression. It should not be used as a weapon of coercion.

I have brought action for attachment when in my judgment the circumstances justified it and I have refused to take such a step, even when clients proposed it, because I would not assume the position of a hold-up man against one who is unarmed. I would not coerce a defendant who was financially responsible in the payment of a sum he felt to be unjust simply because by means of attachment I could "put him in a hole." A defendant has a right to show the injustice, if any, of a suit brought against him.

I have given this matter of attachment more or less disconnected thought since my coming to California thirteen years ago from a State where we had to show a probable detriment to the plaintiff before we could secure the writ and must prove the existence of some of the conditions set forth by Dr. Harker and hereinbefore stated. In my judgment the attachment laws of California should be amended to conform to the principles stated by Dr. Harker.

COMMENTS—THE COLLECTION OF ATTORNEYS' FEES

By A. E. McManus *of the Los Angeles Bar*

California makes no provision for the protection of the members of the bar in the collection of the amount of the reasonable value of services performed. A lawyer, after having earned a fee, is placed in the position of having no security whatsoever for its collection.

I have recently had two experiences and I give them for the purpose of illustrating my point.

1. A substantial judgment was recovered. It was appealed and affirmed. My client, who was a poor man, had other debts and the moment the remittitur came down, before payment could be made, it was stopped by a former creditor. I am now vainly looking for my fees, although my client, who is perfectly honest, would gladly pay them to me if he could.

2. A judgment was recovered for an insolvent client. Before I could render a bill for my services and before any agreement had been attempted, the judgment was assigned by my client for a bona fide consideration and again I am out my pay.

I am sure that every member of the bar can cite cases paralleling these. I have not examined the statutes of the different States, but personally I know of no other State in which an attorney has not a lien to protect him for the just amount of his compensation.

In discussing this subject with other lawyers, the answer seems to be that a lawyer may sue his client, attach and thereby secure himself. What a shameful alternative!

Judicial Temperament

By ROMEYN B. SAMMONS *of the Los Angeles Bar*

Much has been written regarding such subjects as the methods of selecting judges, the need of procedural reform and defects in the jury system, but little has been said concerning what constitute the best qualifications for judicial office. A bad system that selects the right men for the bench is to be preferred to a better system that fails to obtain judges properly qualified to act in judicial roles. Whether judges are appointed for life or elected for short terms is indifferent if those placed upon the bench dispense good law and justice.

It is possible that if that part of our body politic upon whom falls the responsibility of selecting our judiciary had some sort of understanding regarding what constitutes judicial qualifications, the system we now have would function more satisfactorily than it has heretofore.

A concrete illustration or a personal example ofttimes serves as a practical ideal and paves the way to understanding better than do many abstract theories and rules of conduct. Chief Justice Taft has stated that John Marshall was the greatest judge who ever sat upon the bench, and it seems to be universally conceded that Marshall personified in the highest degree the judicial ideal. A consideration of his characteristics and qualifications should therefore be exceedingly informative as to what are the most desirable qualities to be found in a judge.

First of all Marshall was about forty-six years of age at the time of his appointment, and he possessed a broad background of military, political and diplomatic training, to say nothing of his experience as a practitioner at the bar. Few men are granted the opportunities to compress within such a short period so many, varied and interesting experiences as fell to him, and few lawyers have a George Washington and a Robert Morris for clients. So perhaps in that respect his background is too exceptional to serve our purpose. Nevertheless the effects and value of that background become immediately apparent when we examine Marshall's judicial opinions and the manner in which he met and overcame the political crises and judicial exigencies that arose during his long career as Chief Justice of the United States. If his career signifies anything, it is that to be a great judge one must have lived a sufficiency in years and crowded experiences to know and understand people and the trend of things, and still remain tolerant and joyful. For Marshall's life was anything but that of a puritan—it was a clean life, but an exceedingly convivial and happy one, judged even by the standards of his day. It may not be important but the facts are that Marshall lived and enjoyed his long life to the full. While on the bench he encouraged, even urged, voluminous argument on the part of counsel, usually confining himself to questions designed to elicit further discussion. During a trial he said but little, that little being confined to questions and rulings. The great Chief Justice was never so far as known criticised for gratitous remarks or comments aimed to "clutter the record" or embarrass counsel. He was never charged with nor did he assume to know, more about a case than counsel engaged in its trial. On the contrary his attitude was one of quietude and calmness, tinctured with a dignified humility as to the questions before the court. But when he and his brother justices went into conference there was never any question of whose was the master mind — Marshall's dominance of the Supreme Court during the period of thirty-four years that he was on the bench was such that it was called by his contemporaries "Marshall's Court." He exercised a dominance and control that extended as effectively over the justices of pronounced opposite political faith as of those of his own, to such a degree in fact that the most selective appointments of Jefferson aimed to neutralize and defeat Marshall's power and dominance nevertheless fell under the spell of his profound logic and charming character.

So here was judicial temperament in the supreme degree. It gave to counsel abundant opportunity to be heard, it brought out by skillful questioning of counsel the last scintilla of argument, it ruled only after

(Continued on Page 121)

Questionable Judgment Liens

Senator Walter Eden, Chief Counsel of California Title Insurance Company, has recently issued an opinion to the effect that many of the judgments of which transcripts have been filed in the office of the County Recorder did not become liens upon real estate.

Section 674 of the Code of Civil Procedure provides that "an abstract of the judgment * * * may be filed with the recorder of any county, and from such filing the judgment or decree becomes a lien upon all the real property of the judgment debtor, not exempt from execution, in such county, owned by him at the time, or which he may afterwards and before the lien expires acquire. * * * The abstract above mentioned shall contain the following: Title of the court and cause and number of the action; date of entry of the judgment or decree; names of the judgment debtor and of the judgment creditor; amount of the judgment or decree, and where entered in judgment book."

This section of the Code took effect July 29th, 1927.

Many attorneys have been filing transcripts of the judgments, that is, copies. This practice, however, does not constitute a compliance with the provisions of the section. It has been held by our Supreme Court that the filing and recording in the Recorder's office of copies of the judgment docket of a justice's court did not constitute a lien on real estate where the law required that transcripts of the judgment should be filed in the Recorder's office. (Bagley v. Ward, 27 Cal. 370.)

Our Supreme Court has also held that a certified copy of a judgment is not an abstract and that the filing and recording of a certified copy of a judgment did not comply with the statute requiring that an abstract of a judgment must be filed and recorded in order to create a lien. (Frazier v. Crowell, 52 Cal. 399). If the recording of a certified copy (which is a transcript) is not a compliance with the law requiring the recording of an abstract, the filing of an abstract is not a compliance with the law requiring the filing of an authenticated transcript. The term "abstract" and the term "transcript" have been interpreted by the courts and distinguished. (Erkson v. Parker, 3 Cal. App. 98; First Natl. Bank of Chico v. Tyler, 21 Cal. App. 791.)

The form of an "abstract" from a justice's court is set out in section 897 of the Code of Civil Procedure.

In the State of Oregon a statute provides that when it is desired to make a justice's court judgment a lien upon real estate, a certified transcript of such judgment must be filed in the office of the clerk of the District Court, and from the time of filing of the transcript the judgment becomes a lien upon real estate, etc. The Oregon court, construing this statute, held in Dearborn v. Patton, 4 Or. 58, that the filing of an abstract of judgment failed to meet the requirements of the statute and that the judgment was no lien.

From the foregoing decisions, and from a plain construction of the English language, it seems clear that "a transcript of

judgment" is not "an abstract of judgment" or vice versa. Therefore it is obvious that as section 674 of the Code of Civil Procedure provides for an "abstract of judgment" to be filed in the Recorder's office before it constitutes a lien on real estate, such a lien cannot be created by filing a transcript or copy of the judgment.

USE OF PATENTS RECORDS AT LIBRARY INCREASES

Attention is called to the new location of the Los Angeles Public Library patents collection, which has been removed from the first floor to a balcony reached through the Science Department on the second floor. The room will now be open daily except Sunday from 9 a.m. to 10 p.m., which will be a great advantage to those using the collection.

The collection, which is the largest west of the Mississippi, contains a fairly complete file of records of Great Britain, Canada, Cuba, and Germany, and a complete file of United States patents with the exception of the years 1915 to 1925. Every effort is being made to supply this gap, and a measure has been presented by Senator Shortridge to provide Los Angeles Library with the records of these years.

Instances of time and money saved by use of the library collection are numerous. Patents which are out of print are frequently cited and these may be found in the library collection. Copies of specifications are oftentimes wanted for court room use and may be obtained on twenty-four hour notice by the aid of the photostat service of the library.

Inventors wishing to know if a patent similar to the one contemplated has been taken out in a foreign country may find valuable assistance in the records of Great Britain and Germany in the library. The purchase of French and Italian patents records is being considered.

JUDICIAL TEMPERAMENT

(Continued from Page 118)

thorough discussion and consideration, and its remarks and comments were confined to questions and rulings, its conduct was dignified without being austere, gracious without being unctuous, courteous without being facetious or sarcastic, and withal a strength, courage and power that wholly and completely transcended and dominated each and every situation with which it was confronted.

Not all good lawyers have Marshall's qualifications, but then not all good lawyers make good judges. For that matter, not every good judge would necessarily make a successful lawyer. One of the qualifications of every judge should be abundant experience as a lawyer in the general practice, but the judicial temperament is a quite different characteristic from the combative temperament found in most successful court lawyers. The latter qualification is valuable and possibly essential to a great court lawyer, but has no place in the judicial mental ensemble. A judge should always remember he is a lawyer and once practiced to earn his living, but he should never remember it to the degree that every time a cause is tried before him he throws his judicial robes under the bench and actively participates in its trial as one of the counsel. Better than others, lawyers are aware which of their colleagues possesses the proper mixture of qualifications which go to make the judicial temperament. Having in mind those qualifications needed and knowing the lawyers who possess them, there only remains to bring that information home to the common understanding of the populace. It will not be slow to understand or appreciate qualifications thus defined. It is a mere matter of defining the judicial qualities essential to constitute a good judge. Such definition must necessarily eminate from the members of the bar. Has any member of the bar defined for the benefit of the general electorate what the judicial temperament is, or rather should be? Perhaps some day some one will.

Endowment of Southern California Law School

The Law School of the University of Southern California has received a gift of $100,000 from Harry J. Bauer, Los Angeles attorney and an alumnus of the School, according to a recent announcement of the Semi-Centennial Commission of the University. The gift is to be used for the endowment of the School, and is the first large gift to come to the School since in conjunction with the Semi-Centennial Commission it has undertaken the task of raising a fund sufficient for the endowment of its teaching program and the upbuilding of its library.

Mr. Bauer is chairman of the Semi-Centennial Commission which is engaged in raising $10,000,000 for the University by 1930 when the institution will celebrate the 50th anniversary of its founding. The Commission recently announced that after one year of work $1,393,424.75 had been pledged to the Fund.

In conveying his gift to the University Mr. Bauer made the following statement regarding the Law School:

"The University of Southern California is, of course, one of my happy associations, and I am glad to be able to perpetuate the work of the college from which I was graduated. The Law School of the University is the only professional school of its rank in the entire southwest. Under the leadership of Dean Miller it is coming to be one of the best schools in the west. It is my hope and expectation that very shortly it will take its place alongside the outstanding schools of the country, such as Harvard and Columbia. Few realize that graduates of colleges from all over the United States are coming to Los Angeles to study law in our school. This one fact bespeaks the prestige it has already attained. I forsee continued expansion and growth of the School, just as I anticipate the continued development of the entire University."

Under the direction of Dean Justin Miller, who came to the Law School in 1927 from the University of Minnesota where he was a professor of law, the School has formulated a plan for endowment of at least three professorships, the creation of two research fellowships, the endowment of the law library, and the establishment of a legal clinic through which practical legal aid may be given under the administration of the School to those who are financially unable to procure legal counsel.

In extending its program of teaching the Law School proposes, according to a recent announcement, to initiate and conduct progressive research in contemporary legal problems, along the lines of the work already undertaken at Harvard, Yale, Johns Hopkins, Northwestern and Columbia. To make such research possible it is planned to create and endow professorships in at least three of the following fields of law: law of international trade, public utilities, property and taxation, criminal law and administration, jurisprudence, legal history and constitutional law. To assist in the conduct of this program of research it is proposed that two research fellowships be created to be filled by specially-chosen graduate students. The development of the teaching and research work of the School is to be accompanied by the upbuilding of the Law School library, which now numbers about 20,000 volumes. At least 40,000 volumes are required by the School before full facilities for extensive research will be available. Additions are being made to the library at the rate of 2,000 volumes a year. With adequate endowment it is planned to build up rapidly this feature of the School.

With this increased faculty and improved facilities for research the School proposes to continue and develop the Law Review, the publication of the School, which gives the faculty and students a medium for the publication of the results of their research, and makes these findings available to the legal profession, and to establish and carry on the work of a legal clinic. For the latter project endowment of $200,000 is sought.

Attendance Honor Roll

The attendance honor roll is composed of members who have missed not more than two Bar Association monthly meetings during the present administration year.

This issue marks the sixth appearance of the honor roll. It is to be noted that but five names have been removed from the list as it appeared in the November issue of the BULLETIN. This is a sound indication that the honor roll will remain nearly as long at the end of the year.

The editor will appreciate being informed of any corrections, or additions to, the list of names.

The roll (from which is excepted the officers and trustees of the Association), covering all meetings from March to and including November, is as follows:

MEMBERS WHO HAVE ATTENDED ALL MEETINGS

Arthur G. Baker	Judge Marshall F. McComb	R. H. Purdue
Norval J. Cooper	James E. Minds	Clement L. Shinn
Albert B. Harris	Vere Radir Norton	Judge Emmet H. Wilson
Walter P. Kirksey		

MEMBERS WHO HAVE ATTENDED ALL BUT ONE MEETING

Ella M. F. Atchley	W. Joseph Ford	Ezra Neff
Charles E. Beardsley	Edmund Fortune	G. Roy Pendell
Judge Fletcher Bowron	A. W. Francisco	Judge James H. Pope
B. J. Bradner	Martin C. Frincke, Jr.	Rugby Ross
Charles Cattern	Richard C. Goodspeed	Judge Clair S. Tappaan
Robert M. Cordill	Percy V. Hammon	George E. Waldo
Judge Hugh J. Crawford	Saul S. Klein	Robert Young
Charles De Le Fond	Edwin J. Miller	

MEMBERS WHO HAVE ATTENDED ALL BUT TWO MEETINGS

Judge William T. Aggeler	R. M. Fulton	Milan E. Ryan
Judge Harry R. Archbald	Herbert Ganahl	Maurice Saeta
Robert E. Austin	Leo B. George	John W. Satterwhite
John E. Biby	Judge Thomas C. Gould	Jacob F. Schwartz
Florence M. Bischoff	Joseph Hansen	Judge Albert Lee Stephens
J. Calvin Brown	Judge William Hazlett	Frank G. Tyrrell
C. F. Cable	John A. Jorgenson	S. Bernard Wager
Mabel Clausen	J. Donald McGuire	Ida V. Wells
Paul F. A. Conway	L. H. Phillips	Judge H. Parker Wood
Judge Elliott Craig	Wm. H. Robinson	

Book Reviews

HARRY GRAHAM BALTER *of the Los Angeles Bar*
Lecturer in Law at the College of Law, Southwestern University

TRIAL OF AUTOMOBILE ACCIDENT CASES; Louis E. Schwartz; 1928; xxiii and 583 pages; Matthew Bender & Company, Albany, N. Y.

Another accepted dogma has been shattered. Originality has at last entered the realm of law-book writing. Those of the profession who are familiar with (and somewhat weary of) the stereotyped sameness of method and set-up affected by practically all works on the law and its ramifications will greet the *Trial of Automobile Accident Cases* with gladdened eye. Here is a one-volume book which, as its author frankly admits, is not a book on evidence, on forms, on practice, or even on automobile law, yet is interesting and valuable withal. Mr. Schwartz, a practitioner at the New York Bar, has adopted the unique scheme of bringing out the elements required in successfully trying an automobile accident case, by means of questions and answers which serve to illustrate the essential points. Thus for example, when the physician who attended the injured motorist is being examined, the questions and answers are so skillfully set out that the reader can readily grasp what is required to qualify a physician, what he is competent to testify to, and what he can not tell the court. In like manner, examinations of Investigators, Automobile Owners, Chauffeurs, Eyewitnesses, Experts, Guests, Mechanics and many others are conducted. Paralleling each question appears an explanatory statement of what is desirable to be proved, supported by appropriate authorities in the footnotes. In addition, the book contains an exposition on procedure before trial, including interviews with the client, and procedure after the evidence is in, as well as a short selection of forms.

The author has created a book which is by no means profound, but it is valuable in spite of that, or perhaps because of that. Its purpose is the modest one of illustrating how a lawyer should handle the material witnesses in a case arising out of automobile accidents, and not having aimed too high, it has struck its mark. Every lawyer having to do with cases of this nature—and who today has not?—can well profit by a frequent examination of *Trials of Automobile Accident Cases.*

WILLIAM E. BALTER.

LAW OF REAL ESTATE BROKERAGE; By N. B. Nelson, member of the Los Angeles Bar, Co-Editor, Second Edition, *Hillyer's Justice's Code*; 1928; xix and 544 pages; Prentice-Hall, Inc., New York.

Here is an interesting work which should be made known to those who are in any way concerned with the real estate brokerage business—whether layman or lawyer. To Prentice-Hall, Inc., the publisher of this book, should go the credit for developing a new type of legal text—of which *Law of Real Estate Brokerage* is typical. These works on various phases of law are not really strictly legal texts in the sense of the older type of legal work. They appeal to the man of business who is not a lawyer, as well as to the lawyer. To the layman engaged in the field covered by the particular work, the information contained in these books is invaluable as forming a ready handbook. To the lawyer dealing with the legal aspect of the particular business, this type of textbook is very valuable—not as a place where he can find a case "in point," but where he can get a birdseye view of the problems involved. Equipped with the necessary understanding of the underlying principles, the lawyer can then more intelligently pursue the digest and reports for the precious case "in point." For this reason, a textbook of the type of *Law of Real Estate Brokerage* should be given full consideration and use, especially when the work is as complete and has as many useful features as this book has.

The field of Real Estate Brokerage is fully treated. Among the chapter titles are: Legal Regulation of Business; Employment of Broker; Authority, Duties and Obligation of Broker; Renunciation of Broker;

Amount of Commission; Reimbursements, Recompense and Liens; Rights and Liabilities of Principal as to Third Persons; Rights and Liabilities of Broker to, or against Third Persons; Actions by Principal against Broker and by Broker for Remuneration (with helpful discussion of rules of pleading, rules of evidence, defenses, burden of proof, etc.). At the end of each chapter are given problem cases taken from actual litigated cases with the citation of each case. An especially helpful appendix is the one defining "brokers" by setting out the applicable portions of the statutes of each State having a real estate brokers' law. The layman will be interested in the helpful glossary defining in non-technical words technical terms used in real estate law.

Bearing in mind that California has a comprehensive statute dealing with real estate brokers and salesmen (Stat. 1919, p. 1252) Mr. Nelson's work should be especially appealing to lawyer and layman of our State engaged in this field of business.

HARRY GRAHAM BALTER.

DECLARATORY RELIEF

(Continued from Page 104)

been put and the liberal interpretation which courts have placed upon them, justify the statement that, if law is not as yet, it is gradually becoming a progressive science.

It aims to reflect the changes in our social, economic and political structure. Like all evolutionary processes it is slow. But its very slowness works for permanency.

Law is a part of life. So conceived, I might say of it, modifying a famous saying of Mr. Justice Holmes:

"Law is an experiment as all life is an experiment."

In a world in flux, it is in flux.

So viewed, it becomes more understandable, and holds out hope for the ultimate realization of the aim of the great maxim of distributive justice,

"Justitia est constans et perpetua voluntas suum cuique tribuendi."

"For the purpose of understanding the law of today," wrote Dean Pound[16], "I am content with a picture of satisfying as much of the whole body of human wants as we may, with the least sacrifice. I am content to think of law as a social institution to satisfy social wants — the claims and demands involved in the existence of civilized society—by giving effect to as much as we may with the least sacrifice, so far as such wants may be satisfied or such claims given effect by an ordering of human conduct through politically organized society.

* * * * *

"I am content to see in legal history the record of a continually wider recognizing and satisfying the human wants or desires through social control; a more embracing and more effective securing of social interests; a continually more complete and effective elimination of waste and precluding of friction in human enjoyment of existence —in short, a continually more efficacious social engineering."

16. "The End of Law" in *An Introduction to the Philososphy of Law,* pp. 98-99.